IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-931

ROBERT STOPS AND NORMA STOPS,
Petitioners,

v.

LITTLE HORN STATE BANK,
Respondent.

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* AND BRIEF *AMICUS CURIAE* OF THE CROW TRIBE IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI

RICHARD ANTHONY BAENEN
Counsel for Amicus Curiae
1735 New York Avenue, N.W.
Washington, D.C. 20006

WILKINSON, CRAGUN & BARKER
R. ANTHONY ROGERS
Of Counsel

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MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*

The Crow Tribe of the Crow Reservation, Montana, respectfully moves this court for leave to file the accompanying brief, as *amicus curiae*, in support of the petition for writ of certiorari filed by Crow tribal members Robert and Norma Stops.

In support of this motion, your *amicus* states its interest in this case in the accompanying brief. The written consent of the petitioner to presenting this brief is filed simultaneously with it. The respondent has not acted on the request for its consent.

Your *amicus* believes that its views not only will assist the Court in its consideration of the pecition, but also represent the overriding interest of the Crow Tribe, the very government of which is intimately involved with this litigation.

Respectfully submitted,

RICHARD ANTHONY BAENEN
Counsel for Amicus Curiae
1735 New York Avenue, N.W.
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BRIEF *AMICUS CURIAE* OF THE CROW TRIBE IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI

The Crow Tribe of the Crow Reservation, Montana, is a federally recognized Indian tribe, most of whose members reside upon the Crow Reservation and who are governed by the Tribal Council and the four elected officers of the Tribal Council and who are subject to the Court of Indian Offenses. The Crow Tribe is a self-governing tribe in every sense of that word.

The question in this case turns on whether the action of the state courts and county officers constitutes an infringement on self-government of the Crow Tribe. Because the Crow Tribe's own government has such a serious stake in the outcome of this case, it is fair to say that the Tribe has an interest as great, if not

greater, than petitioners in seeing the decision of the Supreme Court of Montana reversed.

REASONS FOR GRANTING THE WRIT

The Montana Supreme Court here has sanctioned execution of a state court judgment by state officials on the property and wages of Crow tribal members, all within the exterior boundaries of the Crow Indian Reservation. That court bases its decision on application of the test announced by this Court in *Williams* v. *Lee*, 358 U.S. 217, 220 (1959), by finding and concluding that the state action did not infringe on the right of the Crow Indians to make their own laws and be ruled by them. The lower court relied on the fact that many of the transactions leading to the initial judgment occurred off the Reservation. The "crucial fact" was that "the subject matter jurisdiction lies with the state court, not the tribal court." (Mont. 1976) (Appendix to Petition (App. 7a)). The lower court was so concerned with its perceived central issue of the "enforcement of a valid judgment," (App. 6a), that it summarily assumed without the required inquiry that the Crow Tribe has provided no means of enforcing such judgments and has not acted in a governmental manner in this enforcement area. (App. 7a). On this assumption, the court then concluded that self-government of the Crow Tribe is not interfered with by executions on the Reservation of state court judgments for off-Reservation debts. *Id.*

At a later point in its opinion, the Montana Supreme Court, without any reference to written authority to the contrary, states that "[t]he tribal court lacked subject-matter jurisdiction." (App. 9a).

Your *amicus* contends that in the first instance the lower court did not use the proper test and in the second instance, assuming *arguendo* the proper test was used,

the court misapplied the test by reference to unfounded and erroneous assumptions.

The question posed in *Williams* v. *Lee*, *supra* at 220, concerning the infringement on tribal self-government, is not the proper inquiry here. The proposition stated in *Williams* v. *Lee* is that

> ". . . Essentially, absent governing Act of Congress, the question has always been whether the state action infringed on the right of reservation Indians to make their own laws and be ruled by them." *Id.*

In *Kennerly* v. *District Court*, 400 U.S. 423 (1971), a case holding that a debt incurred by an Indian on his reservation was not subject to state court jurisdiction, this Court focused on the first portion of the *Williams* v. *Lee* proposition, namely, whether there was a governing Act of Congress. It found that the Act of August 15, 1953, 67 Stat. 589, partially codified at 18 U.S.C. § 1162 and 28 U.S.C. § 1360, as amended, 25 U.S.C. § 322, which established certain conditions by which Montana might have assumed jurisdiction over the Crow Reservation, was such a governing Act of Congress. Because that statute, commonly called Public Law 280, sets the conditions for assertion of any state jurisdiction over Indians on a reservation, the remainder of the *Williams* v. *Lee* test is not applicable in this instance.

It is not disputed, as the petition indicates, page 6, that Montana has not met the statutory conditions for assumption of jurisdiction with respect to the Crow Reservation.[1]

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[1] 25 U.S.C. § 322(a) amended the original provisions of Public Law 280 to establish a new precondition before any state could attempt to exercise jurisdiction over an Indian reservation by requiring the tribe involved to give its consent in a special election held among tribal members. It has been held both before and after this amendment that Montana has no jurisdiction with respect to the Crow Tribe. *Kennerly* v. *District Court*, *supra*, and *Crow Tribe* v. *Deernose*, 487 P.2d 1133, 1135 (Mont. 1971).

In discussing *Kennerly*, the lower court here read the decision as overruling the *Williams* v. *Lee* test, but then construed a revival of the *Williams* test in *McClanahan* v. *Arizona State Tax Comm'n*, 411 U.S. 164, 179 (1973), and *Fisher* v. *District Court*, 424 U.S. 382, 386 (1976). (App. 5a). Your *amicus* does not read *Kennerly* as overruling *Williams*, but simply interprets *Kennerly* as focusing on the governing act of Congress clause in the *Williams* test. Finding such an act, this Court necessarily held that the state must meet the conditions of the act in that case, and in this one Public Law 280, before exercising any jurisdiction over reservation Indian matters.

The Court in *McClanahan* indicated the *Williams* test dealt principally with situations involving non-Indians. 411 U.S. at 179. The Court in *Fisher* found that in a situation with only Indians involved "at least the same standard [showing no infringement with tribal self-government] must be met before the state courts may exercise jurisdiction." 424 U.S. at 386. Neither *McClanahan* nor *Fisher* should be read to support the proposition that determinations of infringement negate the need to determine first if the statutory conditions in Public Law 280 empowering a state to assume jurisdiction have been met. It simply is not possible for the Montana Supreme Court to find the proper exercise of state jurisdiction here absent compliance by Montana with Public Law 280, whether there is infringement with Crow tribal self-government or not, and it was so held by a lower federal court in a virtually identical factual situation. *Annis* v. *Dewey County Bank*, 335 F. Supp. 133 (D. S.D. 1971). *See also Arizona Ex rel. Merrill* v. *Turtle*, 413 F.2d 683 (9th Cir. 1969).

Assuming *arguendo* that here the Court must determine whether Crow tribal self-government has been infringed, under the facts of the instant case, it is clear there is infringement. Contrary to the assumptions made

by the Montana Supreme Court, the Crow tribal court is very much involved here. It is established as a Court of Indian offenses, pursuant to 25 C.F.R. Pt. 11. These provisions govern, with whatever partial modification may be provided by the governing body of a particular tribe, the tribal courts of all tribes which have not established their independently constituted judicial system. The Crow Tribe has made modifications to many of the provisions in 25 C.F.R. Pt. 11.[2] The Tribe has adopted its own language to establish the civil jurisdiction of its court, 25 C.F.R. § 11.22C, and a provision with respect to judgments in civil actions, 25 C.F.R. § 11.24C. The jurisdiction of the Crow tribal court extends to "suits between members and nonmembers which are brought before the courts by stipulation of both parties." 25 C.F.R. § 11.24C. Insofar as the record shows, the respondent here, as plaintiff in the state court, made no attempt to sue petitioners in the tribal court pursuant to this provision. Had that suit been properly brought, as it might have been, this entire issue could have been avoided. Furthermore, judgments of the tribal court may consist of awarding money damages and they may direct the surrender of property or the performance of some other act to benefit the injured party. 25 C.F.R. § 11.24C. Other provisions in the code of federal regulation, specifically adopted by the Crow Tribe and approved by the Secretary of the Interior, authorize under appropriate conditions the Secretary to direct payment of delinquent judgments against tribal members from their Indian trust money accounts. 25 C.F.R. § 11.26C.

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[2] There are approximately 100 separate sections in Part 11 of Title 25, Code of Federal Regulations. Of this number, the Crow Tribe has adopted and the Secretary of the Interior has approved some sixteen different sections specifically applicable to the tribe that control over general language in related sections promulgated by the Secretary. See note following contents in 25 C.F.R. Subchapter B, Part 11.

In short, respondent never attempted to avail itself of the opportunity to sue petitioners in tribal court and obtain satisfaction on its claim through that court system.

Even after respondent obtained a state court judgment, no effort was made to execute that judgment through the auspices of the tribal court. Provisions in the governing regulations do not specify whether the tribal court shall give full faith and credit to a state court judgment, but here the tribal court never had the opportunity to pass on that question and interpret whether or not it considered itself bound by such a consideration or whether it would willingly recognize at least a comity with respect to the state court judgment.

Tribal court process was available and yet was avoided. It is clear that under these circumstances even the *Williams* v. *Lee* test is met and that the tribal self-government procedures of the Crow Tribe are interfered with by the execution of judgment of the state court.

CONCLUSION

For the reasons stated, your *amicus* respectfully prays that the petition for writ of certiorari be granted, or, in the alternative, that the decision below be summarily reversed.

Respectfully submitted,

RICHARD ANTHONY BAENEN
Counsel for Amicus Curiae
1735 New York Avenue, N.W.
Washington, D.C. 20006

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